

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X
JOINT STOCK COMPANY CHANNEL ONE :
RUSSIA WORLDWIDE, et al., :
Plaintiffs, : 16-CV-01318 (GBD)
v. : September 8, 2016
INFOMIR LLC, et al., : 500 Pearl Street
Defendants, : New York, New York
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TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE BARBARA C. MOSES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: This is Judge Moses.

2 MR. DOWD: Good afternoon, Judge Moses. This is Sam
3 Blaustein with my colleague Hardin Rowley. We are colleagues
4 for the plaintiff in the action.

5 MR. FRAADE: And this is Alan Fraade, attorney for
6 the defendant Panorama.

7 THE COURT: Okay. I'm going to ask -- do we have
8 anyone else on the line?

9 MR. BLAUSTEIN: As far as I know, those were the only
10 participants.

11 THE COURT: All right. So for the plaintiff, Mr.
12 Blaustein and excuse me, give me your colleague's name again.

13 MR. ROWLEY: Hardin Rowley, R-O-W-L-E-Y.

14 THE COURT: And for defendant Panorama, Mr. Fraade,
15 correct?

16 MR. FRAADE: Right.

17 THE COURT: All right. Try to keep your voices up.
18 We do not have a court reporter since this is an informal
19 status conference, or some kind of a conference anyway, in
20 chambers. But we are trying to make an audio recording, so
21 keep your voices up if you can.

22 The reason I asked you to call in this afternoon is
23 that I received the September 5th letter from plaintiff's
24 counsel seeking a two week extension on the briefing schedule
25 for the Rule 12(b) (2) motion, but since the underlying problem

1 seems to be a disagreement regarding discovery as to which I
2 understand you met and conferred yesterday. I thought it might
3 be more efficient to get everyone on the phone and see whether
4 that dispute has been resolved and what I can do to help you
5 resolve it because I don't want you coming back to me every
6 week saying we're still quarreling about discovery. So let me
7 get a report perhaps from plaintiff because you wrote me the
8 letter as to whether you were able to resolve the dispute
9 yesterday and if not, what the issues are.

10 MR. BLAUSTEIN: Very good, Your Honor. Again, this
11 is Sam Blaustein for plaintiffs.

12 As Your Honor may recall, an order was issued on July
13 22nd requiring the production of jurisdictional discovery in
14 advance of the filing of Panorama's 12(b) (2) motion asserting a
15 lack of personal jurisdiction over it.

16 THE COURT: Well, what it actually required was that
17 you served that discovery by July 29th and that Panorama respond
18 by August 19th before your opposition papers were due.

19 MR. BLAUSTEIN: So let me address those points. We
20 timely served discovery requests and Panorama timely served its
21 response on August 19th, so there's no issue with respect to the
22 timeliness of the response. The issue has to do more with the
23 quality and the quantity of the response.

24 THE COURT: Okay.

25 MR. BLAUSTEIN: Specifically, we only received one

1 document from Panorama, that being its certificate of
2 incorporation from the British authorities. There were no
3 other documents produced. Because we are faced with the
4 predicament of this being a 12(b) (2) motion in connection with
5 jurisdictional discovery, as plaintiffs we will bear the burden
6 of satisfying to the Court that jurisdiction exists under the
7 rules of the foreign state under CPLR 301 or 302.

8 THE COURT: Okay.

9 MR. BLAUSTEIN: We believe that the evidence that we
10 have is sufficient to start that showing. However, we do not
11 want to be put in a predicament where we ask for jurisdictional
12 discovery and have received only one page and have to move
13 forward with that reality.

14 THE COURT: Now, I also gave you permission, if I
15 recall correctly, to serve [inaudible] subpoena on an internet
16 server.

17 MR. BLAUSTEIN: That is correct, Your Honor, and that
18 subpoena has been served and we have been contacted by that
19 entity's processing service. They have represented to me that
20 we were to receive a response approximately two weeks ago. We
21 have not yet received that response and I have alerted them to
22 the possibility that we will need to make a motion to the
23 court.

24 THE COURT: All right. Have they indicated that they
25 are going to resist or is this just a delay as far as you can

1 tell?

2 MR. BLAUSTEIN: It is a delay. They represented to
3 me in writing that they would be providing us documents by
4 approximately the end of August.

5 THE COURT: They missed that deadline.

6 MR. BLAUSTEIN: It was an internal deadline. I'm not
7 sure how enforceable it is but that's what they've represented.

8 THE COURT: All right. Mr. Fraade, anything you need
9 to augment or jump in on so far?

10 MR. FRAADE: No. Just in terms of the lack of
11 documents, I did request my client provide me with any
12 documents they have. They came back with the one document.
13 Then when I questioned it, they said anything they did, whether
14 it was registering for a phone number -- or the website was all
15 done online and they don't have any documents for that, and I
16 took them at face value on that. I don't think I need -- you
17 know, that's all they have of those documents since I provided
18 the responses in the response to discovery which was provided
19 to plaintiffs.

20 THE COURT: All right. So you met and conferred
21 yesterday with defendant's counsel and did you resolve
22 anything?

23 MR. BLAUSTEIN: Your Honor, this is Samuel Blaustein
24 again. I think that the only thing that we resolved is that
25 Mr. Fraade would go back to his clients and make the request.

1 THE COURT: All right. So now you need to get a
2 little more specific with me about what else you asked for that
3 Panorama has not produced.

4 MR. BLAUSTEIN: I think I can sum that up relatively
5 quickly. As Your Honor may recall, we did an investigation
6 concerning Panorama's website, and the primary thrust of this
7 case is that Panorama, and indeed the other defendants,
8 complete their nefarious actions through the internet. We have
9 --

10 THE COURT: Now, the website that you're talking
11 about is the -- wait a minute, don't tell me; www.panamatv? Is
12 that it?

13 MR. BLAUSTEIN: Mypanorama.tv.

14 THE COURT: Mypanorama.tv. All right. Mr. Fraade,
15 is that your company's website?

16 MR. FRAADE: My client has advised me that they do
17 own that website.

18 THE COURT: All right. So that in the --

19 MR. BLAUSTEIN: That is in the interrogatories.

20 THE COURT: Pardon?

21 MR. BLAUSTEIN: The defendant Panorama has admitted
22 in its response to interrogatories that it owns the website.

23 THE COURT: Okay. Well, that's helpful because I was
24 a little unclear when we last got together whether even that
25 was being contested. So they own the website. What else you

1 need to know about the website?

2 MR. BLAUSTEIN: Well, what we would like to know is
3 who registered it?

4 THE COURT: What do you mean who registered it? They
5 said they own it. Well, they said that they owned it but the
6 website was registered through a United States entity and we
7 believe that it is being hosted by another company that is here
8 in the United States. Whether the transaction, whether the
9 registration and the current operation of the website is
10 currently undertaken, or was undertaken in the United States,
11 is a question that goes to the issue of jurisdiction.

12 THE COURT: All right. So are they not telling you
13 what companies they use to register it or to host it, or are
14 they simply telling you that they can't produce paper documents
15 because it was done online? Maybe I should ask Mr. --

16 MR. BLAUSTEIN: I believe it is a little bit of both,
17 Your Honor. The now named defendants, the LP, admits that they
18 own the website but nothing more. They claim that it was
19 registered online. We think that there should be some record
20 of that registration.

21 THE COURT: Yes, there should be. Do they claim they
22 don't know who they registered it through?

23 MR. FRAADE: That question wasn't asked. The
24 question was do you have any documents I believe with respect
25 to the website and the answer was I guess no, that it was done

1 online.

2 THE COURT: Okay. Done online with what entity? I'm
3 trying to cut through --

4 MR. FRAADE: I don't think that question was raised,
5 so it was --

6 THE COURT: Well, I'm raising it, Mr. Fraade. I'm
7 trying to cut through form here. If it could have been an
8 interrogatory and not a document request, then maybe it needs
9 to get re-served on an expedited basis as an interrogatory that
10 you need to answer. I assume your client knows who registered
11 it, right?

12 MR. FRAADE: I would think yes, and I believe that
13 the entity that they've requested the information from, which
14 is the first I've heard now that they haven't responded, would
15 be able to verify that information.

16 THE COURT: So your view, Mr. Fraade, is that that
17 information should come from domains by proxy?

18 MR. FRAADE: Right. They would have that
19 information. If they didn't provide it --

20 THE COURT: Yes, but --

21 MR. FRAADE: -- then I'll go back to my client to
22 confirm.

23 THE COURT: No, no, no. It doesn't work that way.
24 You represent the party. The party in the first instance has
25 the obligation to provide relevant information as a backup, or

1 sometimes as necessary as a workaround. The plaintiff is
2 entitled to serve a Rule 45 subpoena, but that is never the
3 discovery measure of first resort if the same information is in
4 the possession of the party. So how are you going to get that
5 information to plaintiffs counsel?

6 MR. FRAADE: I can contact my client and ask him to
7 confirm that that is the entity that they utilized to obtain
8 the website.

9 THE COURT: Okay. And then the other question is who
10 hosts it. Is that correct, Mr. Blaustein?

11 MR. BLAUSTEIN: Yes. We would like -- we believe
12 that we know the answer to that. We believe it's an entity in
13 Washington State but we would like confirmation of that.

14 THE COURT: All right. So are there any other
15 outstanding discovery issues?

16 MR. BLAUSTEIN: Yes, Your Honor. I think that the
17 issue of the ownership of the website is one issue that needs
18 to be addressed but I think that the most important question
19 that we asked was our interrogatory request number 10, and that
20 request sought documents that mention, concern, and relate to
21 any agreement or contract made between Panorama and Panorama as
22 defined as the LP in the definitions, and its authorized
23 representatives in the United States.

24 Now, as Your Honor recalls, at the last conference we
25 made reference to Exhibit 13 to the complaint which is a

1 translation of the website mypanorama.tv. That --

2 THE COURT: Is that the one that gives the address in
3 Brooklyn?

4 MR. BLAUSTEIN: That is correct, Your Honor. Now, we
5 have this documentary evidence that we've taken from the
6 website but now in their responsive interrogatories, Panorama
7 the LP admits to owning that indicates that there is this
8 address in Brooklyn.

9 THE COURT: Got it. So Panorama owns the website.
10 The website directs US customers to an address, and I believe a
11 couple of individual names if I'm not mistaken in Brooklyn,
12 correct?

13 MR. BLAUSTEIN: There's a name for someone named
14 Slavo but I believe Slavo may be located in Los Angeles.

15 THE COURT: Oh, I'm sorry. Is there a local phone
16 number given on the website or just the 800 number?

17 MR. BLAUSTEIN: There is a local phone number given
18 on the website as well.

19 THE COURT: All right. It's a 718?

20 MR. BLAUSTEIN: Yes.

21 THE COURT: Okay. So what questions have you asked
22 or what documents have you requested regarding the 718 number?
23 I assume you want to know who owns that number, or to be more
24 precise, whom it is at the time.

25 MR. BLAUSTEIN: Well, Your Honor, the website

1 mypanorama.tv also includes a 1-800 number.

2 THE COURT: Right.

3 MR. BLAUSTEIN: And we are convinced beyond a
4 reasonable doubt that the 718 number has been registered in the
5 United States.

6 THE COURT: Well, it's a Brooklyn area code. I don't
7 think, you know, the Moscow telephone company gives you a 718
8 area code.

9 MR. BLAUSTEIN: That is correct, Your Honor. And
10 that leads me to my next point which is the interrogatory and
11 the corresponding discovery request that we made asks about the
12 1-800 number on the website, that number being 1-800-556-5617.
13 And the reason that we asked about the 1-800 number is there's
14 something called the unified numbering system and those toll
15 free numbers that are assigned a 1-800 beginnings are only
16 available in the United States, Canada, and a select few other
17 North American countries.

18 THE COURT: And you want to know if this one is a US
19 number.

20 MR. BLAUSTEIN: That is what we would like to know,
21 Your Honor. We are of the belief, based upon our research,
22 that a toll free number that would be directed to the Russian
23 Federation would not start with 1-800 but would use the Russian
24 Federation's extension which is 8-800.

25 THE COURT: I would think so. But I skipped ahead.

1 You were telling me about your interrogatory 10 which has to do
2 with -- well first you said it was an interrogatory but then
3 you said it asked for the production of documents that
4 constituted agreements or contracts with representatives in the
5 United States.

6 MR. BLAUSTEIN: Yes, that was a document request.

7 THE COURT: Document request number 10. So you
8 wanted pieces of paper that constitute some sort of agreement
9 or contract with authorized representatives in the United
10 States. And Mr. Fraade, what was your response, your client's
11 response to that one?

12 MR. FRAADE: No such documents exist --

13 THE COURT: And is that because when your clients --

14 MR. FRAADE: -- in the possession or custody of
15 Panorama.

16 THE COURT: And that's because in your client's view
17 those folks manning the office in Brooklyn don't belong to your
18 client?

19 MR. FRAADE: Correct.

20 THE COURT: All right. Do you have the names of the
21 individuals in Brooklyn, Mr. Blaustein? You gave me the name
22 of somebody who's not in Brooklyn.

23 MR. BLAUSTEIN: Yes. Our research has given us the
24 names. Bear with me for one moment. I believe there's an Alex
25 Yanovar [Ph.]. And we have asked questions about these

1 individuals. The responses we have received is that there is
2 no formal affiliation.

3 THE COURT: No formal affiliation.

4 MR. BLAUSTEIN: No affiliation with those people.

5 THE COURT: All right. Well, have you, for example,
6 asked for emails with Mr. Yanovar?

7 MR. BLAUSTEIN: We have not asked for emails.

8 THE COURT: Have you asked for emails of anybody
9 doing business in Brooklyn?

10 MR. BLAUSTEIN: Well, the reason we didn't ask for
11 emails specifically is that we used the southern district's
12 standard definition of documents which encompasses emails.

13 THE COURT: Okay. So you did ask for emails?

14 MR. BLAUSTEIN: Yes. I guess the answer is yes just
15 by and through the southern district's definition.

16 THE COURT: Okay. And Mr. Fraade, your position as I
17 understand it correctly, and I'm going to maybe oversimplify it
18 a bit here, is we don't know who those folks are in Brooklyn,
19 we didn't rent that office, they don't talk to us, they don't
20 speak for us, we don't know who they are.

21 MR. FRAADE: There was one individual there who, I
22 don't remember his last name, Asaf [Ph.], who apparently has --
23 and I think it did come up in prior documents, has purchased
24 product as anyone else has the right to purchase product on the
25 website and has resold it. And plaintiffs are aware of his

1 name and who -- I think his last name, I don't have it in front
2 of me. So clearly they -- I believe my client knows that that
3 person exists. I believe he is listed as one of two dealers,
4 the two people who have been mentioned I think as a list of
5 dealers, but there's no formal dealership or representative
6 agreement or distribution agreement. I believe these people
7 asked to be listed on the website to facilitate I guess their
8 ability to sell in the United States and not for my client to
9 sell in the United States.

10 THE COURT: All right. Let me see if I got this
11 straight, Mr. Fraade. Your client has nothing to do with these
12 folks except that they know that it resells your client's
13 products and it allows them in effect to put their address and
14 their contact information on your website for that purpose?

15 MR. FRAADE: That's correct.

16 THE COURT: Now, have the document requests
17 previously served been sufficient to cover communications
18 including email communications to or from these folks or
19 concerning them?

20 MR. BLAUSTEIN: Your Honor, we have in our requests
21 of the term documents --

22 THE COURT: I understand. Documents means emails.
23 Have you asked roughly enough to make discoverable, for
24 example, an email from one of the principals of the company in
25 Russia to Mr. Yanovar or Mr. Asaf or concerning them and their

1 activities in Brooklyn?

2 MR. BLAUSTEIN: Yes, Your Honor. Document request
3 numbers 2 and 3 specifically asked for documents that mention,
4 concern, relate to, and/or pertain to any agreements or
5 contract made between Panorama LP and both Mr. Yanovar and
6 Slova who's the individual referenced on the website.

7 THE COURT: I see. So Mr. Fraade, you're taking the
8 position that you don't have to produce anything because you
9 don't have a contract with these guys?

10 MR. FRAADE: Well, there's no agreement responding to
11 those.

12 THE COURT: Well there must've been some agreement if
13 you agreed to put the Brooklyn address on your website. That's
14 an agreement. It doesn't have to be gold plated. Do you have
15 any emails that discuss these matters?

16 MR. FRAADE: I could obviously raise that with my
17 client.

18 THE COURT: I think you'd better.

19 MR. FRAADE: My client didn't have anything in
20 response to what was requested.

21 THE COURT: Let me be clear. An agreement does not
22 have to be a written signed contract. An agreement can be an
23 informal oral agreement. If you have documents, even if they
24 don't say contract at the top, that reflect the existence of
25 whatever agreement is in place that allows those fellows to do

1 whatever it is in Brooklyn, you need to produce those.

2 MR. FRAADE: I will clarify that with my client and
3 make the request.

4 THE COURT: And if I continue to hear, because you
5 have to admit, Mr. Fraade, the version of the facts here, not
6 the most plausible I've ever heard. So if this goes on and
7 there continues to be nothing, you have no explanation for why
8 that address and that phone number and those individuals
9 operating out of Brooklyn are on your website and what they're
10 doing there, then I'm probably going to have to require one of
11 your principals to sit for depositions. And I think you'd
12 probably rather avoid that.

13 MR. FRAADE: All right. I will clarify with my
14 client and make sure they provide the proper information.

15 THE COURT: Okay. Any other categories that we need
16 to get? And this would include also incidentally going back to
17 Mr. Blaustein's original report, even if your client did all of
18 this registration and web hosting arrangements, made all of
19 those arrangements online, it will have some electronic
20 documents reflecting what those arrangements were and when and
21 by whom they were made. They may be in the form of emails,
22 they may be in the form of data which was retrievable from your
23 client's account electronically at the web hosting service or
24 the company that it used to register the website. Keep in mind
25 that electronic data counts as documents under the --

1 MR. FRAADE: I understand, Your Honor.

2 THE COURT: So you've got to find that stuff, emails,
3 electronic data, whatever it is, and you've got to produce it.
4 And if you keep coming back and saying we don't know what those
5 guys are doing in Brooklyn and we don't have anything, the next
6 request I get I'm sure is going to be for a deeper and more
7 painful level of discovery. Is there anything else, Mr.
8 Blaustein?

9 MR. BLAUSTEIN: Your Honor, I think that you've
10 expressed what is the most critical aspect of these things at
11 the moment. I would only like to advise the Court that there
12 is a slim chance that we will have to seek some type of relief
13 with respect to domains by proxy. I'm hoping to avoid that,
14 however.

15 THE COURT: The domains by proxy [inaudible]?

16 MR. BLAUSTEIN: Yes. They're based in Arizona. Or
17 at least the entity that's responding to the subpoena is.

18 THE COURT: Okay. Well, my experience is, generally
19 speaking, companies operating lawfully in the United States do
20 respond to Rule 45 subpoenas.

21 MR. FRAADE: Yes.

22 THE COURT: They may not respond as quickly as you
23 and I might like them to, but they do respond. So here's what
24 I'm going to do I think. I am going to extend for three weeks,
25 not two, I'm going to extend for three weeks the briefing

1 schedule. And that is going to make the opposition brief due
2 on the 30th I think. Is that right?

3 MR. BLAUSTEIN: That's correct by my -- well, it
4 would -- yes. Yes, Your Honor.

5 THE COURT: All right. And that is going to make the
6 reply paper a week later. Hold on. Now I have to look at my
7 calendar if I can find my calendar.

8 [Pause in proceedings.]

9 THE COURT: All right. So it's September 30th which
10 is a Friday. The opposition, and that makes it October the 7th,
11 the following Friday for reply.

12 In the meantime, the defendant will once again search
13 its documents including the electronic documents that we
14 discovered for items which are responsive to the plaintiff's
15 pending requests keeping in mind the broad definition of
16 documents and the generous definition of agreement that we
17 discussed during the course of this call. And when are we
18 going to have a response from Panorama next, Mr. Fraade?

19 MR. FRAADE: I'm thinking, Your Honor. There's a
20 time difference and it's always a little complicated to
21 communicate with my client but I'll get an email out to them by
22 if not later today, by tomorrow. I guess give me a week from
23 Monday because I think I have to go through the computers. My
24 client seems to travel quite a bit to Russia and Europe so I
25 assume he has to be in his office at his computer to be able to

1 do the search. So assuming that he will be available -- if
2 not, I will get back to plaintiff's counsel to tell him if
3 there's any delay. But if you can give me until a week from
4 Monday --

5 THE COURT: That would be the 19th, correct?

6 MR. FRAADE: That's correct.

7 THE COURT: All right. So to the extent that
8 responsive documents are found now that we've had this chat,
9 you'll produce them by the 19th.

10 MR. FRAADE: Yes.

11 THE COURT: Now, should I send a follow-up conference
12 date so that the parties can let me know if there's still a
13 problem or there's not still a problem after the 19th?

14 MR. BLAUSTEIN: Plaintiffs have no objection to
15 scheduling another conference if the Court thinks it's
16 necessary.

17 THE COURT: Well, let's plan for success. So I will
18 not schedule that conference now. But if there is a problem, I
19 want to hear about it by the 20th, Mr. Blaustein. Okay?

20 MR. FRAADE: Okay.

21 MR. BLAUSTEIN: Absolutely, Your Honor.

22 THE COURT: All right. So write me a letter by the
23 20th if you think there is a need for further court intervention
24 and outline in the letter what you think that need is. I can
25 see scenarios where you might want to write me a letter and not

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1 need court intervention yet. For example, if Mr. Fraade calls
2 you up and says we have documents for you but we can't produce
3 them until the 21st, well you can just tell me that. But tell
4 me something by the 20th. Okay?

5 MR. FRAADE: We will certainly provide you an update
6 by the 20th, Your Honor.

7 THE COURT: All right. Excellent. Anything else
8 that we need to do on today's conference?

9 MR. BLAUSTEIN: Nothing from plaintiff's perspective.

10 THE COURT: Mr. Fraade?

11 MR. FRAADE: Not from our end.

12 THE COURT: All right. And you're clear on what you
13 need to do, right?

14 MR. FRAADE: Yes, I am.

15 THE COURT: Good. Thank you very much, gentlemen.

16 MR. FRAADE: Everyone have a good day.

17 MR. BLAUSTEIN: Thank you.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Mary Greco

7 Dated: September 14, 2016

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